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4 **UNITED STATES DISTRICT COURT**  
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6 **EASTERN DISTRICT OF CALIFORNIA**

7 DURRELL ANTHONY PUCKETT,

8 Plaintiff,

9 v.

10 BARAONA, *et al.*,

11 Defendants.

Case No. 1:21-cv-01448-KES-BAM (PC)

ORDER CONSTRUING PLAINTIFF'S  
MOTION TO DISMISS CERTAIN  
DEFENDANTS AND DEFENDANTS'  
STATEMENT OF NON-OPPOSITION AS  
STIPULATION FOR VOLUNTARY  
DISMISSAL OF CERTAIN DEFENDANTS

(ECF Nos. 101, 102)

ORDER DIRECTING CLERK OF COURT TO  
TERMINATE PLAINTIFF'S MOTION TO  
DISMISS AND TO TERMINATE  
DEFENDANTS CRUZ AND MARTINEZ  
FROM ACTION

16 Plaintiff Durrell Anthony Puckett ("Plaintiff") is a state prisoner proceeding *pro se* and *in*  
17 *forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on  
18 Plaintiff's first amended complaint against: (1) Defendants Baraona, Burnitzki,<sup>1</sup> Leos, Hernandez,  
19 and Diaz for excessive force in violation of the Eighth Amendment; (2) Defendant Leos for  
20 sexual assault in violation of the Eighth Amendment; and (3) Defendants A. Ruiz, Martinez, E.  
21 Ruiz, Meier,<sup>2</sup> Gutierrez, Cruz, Allison (Cronister), and Price for failure to protect in violation of  
22 the Eighth Amendment.

23 On October 24, 2024, Plaintiff filed a motion to dismiss certain defendants. (ECF No.  
24 101.) Plaintiff stated that he willfully dismisses officer Cruz and Dr. Martinez from this action,  
25 with prejudice. (*Id.*) On October 25, 2024, all Defendants filed a statement of non-opposition to  
26 Plaintiff's motion to dismiss Defendants Cruz and Martinez. (ECF No. 102.)

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28 <sup>1</sup> Erroneously sued as "Burneszki."  
<sup>2</sup> Erroneously sued as "Meiers."

1 The Court construes Plaintiff's motion to dismiss, together with Defendants' statement of  
2 non-opposition, as a stipulation of dismissal of Defendants Cruz and Martinez, with prejudice,  
3 signed by all parties who have appeared, pursuant to Federal Rule of Civil Procedure  
4 41(a)(1)(A)(ii). (ECF Nos. 101, 102.) “[A] dismissal under Rule 41(a)(1) is effective on filing,  
5 [and] not court order is required[.]” *Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc.*, 193  
6 F.3d 1074, 1078 (9th Cir. 1999).

7            Accordingly, IT IS HEREBY ORDERED as follows:

1. Plaintiff's motion to dismiss, (ECF No. 101), and Defendants' statement of non-  
opposition, (ECF No. 102), are CONSTRUED as a stipulation of dismissal of Defendants  
Cruz and Martinez, with prejudice, pursuant to Federal Rule of Civil Procedure  
41(a)(1)(A)(ii);  
2. Defendants Cruz and Martinez are terminated from this action, with prejudice, by  
operation of law, without further order from the Court, pursuant to Federal Rule of Civil  
Procedure 41(a)(1)(A)(ii);  
3. The Clerk of the Court is DIRECTED to:
  - a. Terminate Plaintiff's motion to dismiss, (ECF No. 101), as unnecessary; and
  - b. Terminate Defendants Cruz and Martinez from the docket; and  
4. This action proceeds on Plaintiff's first amended complaint against: (1) Defendants  
Baraona, Burnitzki, Leos, Hernandez, and Diaz for excessive force in violation of the  
Eighth Amendment; (2) Defendant Leos for sexual assault in violation of the Eighth  
Amendment; and (3) Defendants A. Ruiz, E. Ruiz, Meier, Gutierrez, Allison (Cronister),  
and Price for failure to protect in violation of the Eighth Amendment.

IT IS SO ORDERED.

25 || Dated: **October 29, 2024**

/s/ *Barbara A. McAuliffe*  
UNITED STATES MAGISTRATE JUDGE